

## DELTA PROTECTION COMMISSION

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June 14, 1996

To: Delta Protection Commission  
From: Margit Aramburu, Executive Director  
Subject: Further Information on Abandoned Vessels

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Background:

In January, 1996, the Commission held a public hearing to discuss the issue of abandoned vessels in Delta waterways (copy of Staff Report attached, see pages A-1 to A-5)). Several individuals spoke to the Commission (copy of excerpt of minutes attached, pages B-4 to B-6). The Commission suggested that additional research on existing laws affecting vessels be submitted to the Commission.

Additional Information About Laws Affecting Vessels:

Attached is a summary of research of local, state and federal laws that affect mooring of vessels for extended periods of time (see pages C-1 to C-4). None of the five Delta counties has an ordinance specifically prohibiting the mooring of vessels in waterways for extended periods of time.

The Department of Parks and Recreation controls vessel within its parks. The only other laws that are currently enforced preclude vessels from blocking navigable waterways, particularly the Sacramento and Stockton deepwater shipping channels.

Possible Funding Sources:

The original staff report pointed out the lack of funding for existing programs to clear abandoned vessels from Delta waterways. Several funding sources could be sought including: (1) surcharge on vessel registration fees; (2) funds from State special funds generated from existing taxes on boaters; (3) funds from other State special funds (water funds, clean-up funds, environmental license plate funds, etc.); or (4) funds from Federal programs for boating and/or environmental clean-up.

### Implementation of Programs:

A comprehensive program would need oversight to ensure that a program would resolve problems of abandoned vessels and not simply result in their relocation to another jurisdiction.

Responsible parties could be: (1) a federal agency, such as the Coast Guard; (2) a State agency, such as Department of Boating and Waterways or State Lands Commission; (3) local agencies working together, such as through the Councils of Governments (Association of Bay Area Governments, San Joaquin Council of Governments, and Sacramento Area Council of Governments), or through a memorandum of understanding or joint powers agreement; or (4) through a regional non-profit group, similar to the DeltaKeeper.

### Legislative Action:

Depending on the type of program, legislation may be needed to implement the program. Congressman Pete Stark of Fremont is currently developing legislation which would prohibit abandonment of vessels in the navigable waters of the United States, would invoke a penalty for doing so, and would provide funds for removal of abandoned vessels by the Coast Guard.

If a State program is developed based on the abandoned vehicle model, new legislation would be needed to create the program. Funding from State special funds requires authorization by the Legislature. In addition, speakers recommended legislation to streamline the process for removing abandoned vessels.

If a regional program is developed, local ordinances may be needed, or an agreement drafted for adopted by all the local governments.

### Staff Recommendation:

Staff recommends the Commission discuss the various options, determine a desired outcome, and one or more methods for reaching the desired outcome, and direct staff to prepare a resolution for adoption at a future meeting.

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January 12, 1996

To: Delta Protection Commission  
From: Margit Aramburu, Executive Director  
Subject: Abandoned Vessels in Delta Waterways

Background

The issue of abandoned vessels has been raised as an issue of concern in the Delta by both landowners and by local government marine patrols. A San Joaquin County salvor estimates that within San Joaquin County alone, there are currently about 200 abandoned vessels in the Delta waterways. This memo outlines how vessels are registered, describes the current programs for addressing abandoned vessels, and outlines ideas for a removal program.

Vessel Registration:

Vessels are registered with the State of California through the Department of Motor Vehicles (DMV). Most vessels must have current, valid registration and display the registration number on the outside of the vessel. Every year a brightly colored, four-inch-square sticker with the year upon it is sent to the vessel owner. That sticker is attached to the hull next to the registration number. In addition, vessels must by law carry certain safety equipment.

\$ 9.00

The cost of registering a vessel is ~~\$15.00~~; annual renewal is \$5.00 per year. Approximately \$2.50 of the fee goes to DMV; the remainder goes to the Harbors and Watercraft Revolving Fund to be used for a variety of boating-oriented activities.

The Harbor and Watercraft Revolving Fund totaled \$103,000,000 for the period July 1, 1992 to June 30, 1994 (two fiscal years). The sources were 54% from Motor Vehicle Fuel Fund; 7% from Interest, Surplus Money Investment; 13% from Boat Registration Fees; 24% from Repayment of Loan Principal and Interest; and 2% from other sources.

### Description of Abandoned Vessels:

Abandoned vessels may be old and not worth repairing, stolen and stripped, or otherwise of little value. Abandoned vessels, depending on the size and configuration, may contain engines and/or other equipment which may leak oil, gas or other materials into the waters of the States. In addition, sunken abandoned vessels may become a hazard to navigation.

The Harbors and Navigation Code specifically addresses abandoned vessels on public property. Vessels left for over 100 days are deemed "abandoned". After that time, the local government may dispose of the abandoned vessel. If there is a registration number, the local government must send a notice to the last registered owner (Section 522).

Any peace officer or officer of the State Lands Commission may remove a vessel from a **public waterway** under the following circumstances (Section 523):

- (1) The vessel is moored, docked, beached or made fast to land in such a position to obstruct the normal movement of traffic, or to create a hazard to other vessels using the waterway, to public safety or to the property of another.
- (2) The vessel has been reported stolen.
- (3) When the person on or in charge of the vessel is incapacitated by physical injury or illness.
- (4) When the person operating the vessel is arrested and that party must go before a magistrate without unnecessary delay.
- (5) When the vessel interferes with or otherwise poses a critical and immediate danger to navigation or to the public health, safety or welfare.

Any peace officer may remove a vessel from **private property**:

- (1) When the vessel is found on, or attached to, private property and a report has been made that the vessel has been stolen.
- (2) After a reasonable period of time if the vessel has been involved in and left at the scene of a boating accident and the owner is not available to grant permission to remove the vessel (But not if the owner has been contacted and has refused to grant permission to remove the vessel).

The Code states (Section 525) "...no person shall abandon a vessel upon a public waterway or public or private property without the express or implied consent of the owner or person in lawful possession or control of the property."

#### Current Abandoned Vessel Removal Programs:

There are only limited on-going programs to remove abandoned vessels from the Delta waterways.

The Coast Guard will remove a vessel only if it is in a deepwater ship channel and endangering navigation.

The Department of Fish and Game can, and does occasionally, order removal of a vessel if it is discharging pollutants into aquatic habitat and can seek reimbursement of costs from the boat owner.

The County Sheriffs can, and occasionally do, order removal of a vessel if it is endangering public health, safety, and welfare. The Counties do not have designated funds for removal. Sometimes the County will transfer ownership of an abandoned vessel to a salvor and the salvor will sell the vessel or parts of the vessel to offset costs of vessel towing and disposal.

#### Lien Programs:

The Harbors and Navigation Code (Section 500-509) outlines procedures for exercising liens against a vessel for costs associated with storing a vessel. For example, an abandoned vessel is towed from public or private property where it is causing a hazard and is stored in water or on land while the legal owner is sought through the vessel registration. Sixty days after the lien arises, the lienholder may request authorization from DMV to hold a lien sale.

The Code outlines the requirements for a lien sale for vessel valued at more than \$1,500, and for those less than \$1,500, including notice to the registered owner or last owner of record, public notice, etc.

#### Disposal of Abandoned Vessels on Public Property:

The Harbors and Navigation Code (Section 510-525) outlines disposal of any "hulk, derelict, wreck, or parts of any ship, vessel, or other watercraft...beached, or allowed to remain in an unseaworthy or dilapidated condition upon publicly owned submerged lands...for a period longer than 100 days...is abandoned property". After that time, the local government "may cause the property to be sold, destroyed, or otherwise disposed of in such manner as it may determine is expedient or convenient."

However, if there is a registration number on the watercraft, the local government must send a notice to the last registered owner and the disposition must be handled as a lien sale (see above).

#### Program to Remove Abandoned VEHICLES:

If a vehicle is parked on public or private property beyond that allowed under a local code, the vehicle can be cited and/or towed by the local government. In the City of Sacramento, the limit for parking is 72 hours. Towing is by a private company under contract to the City.

Reimbursement is available to the local government through a special one dollar per year surcharge on vehicle registration within participating counties. That fee is collected by DMV, then distributed by the State Controller to a local Service Authority. The Service Authority then distributes the funds to all participating local governments based on the number of vehicles towed. The Service Authority must include a county and at least half of the cities within that County.

Currently Contra Costa, Sacramento, and Solano Counties participate in this program; San Joaquin and Yolo Counties do not.

Last year, the Sacramento area Service Authority received approximately \$875,000. The participating agencies are Sacramento County, and the Cities of Sacramento, Galt, and Isleton. Until January 1, 1995, the monies were divided based on population; now the monies are divided based on the number of abandoned vehicles, calculated quarterly. Last year, the County received about 11,000 complaints of abandoned vehicles; about 1,800 were towed away. Others were GOA (gone on arrival) when an enforcement officer arrived, or were moved after being tagged.

#### Issues:

1. **Funding.** There is currently no funding available for removal of abandoned vessels. Possible sources of funding are: grants, fees from settlements of lawsuits, registration fees on vessels, funds from boat gas sales tax, funds for cleaning up water pollution, boat property taxes.

2. **Vessel Storage.** Once a vessel is removed from a waterway, the vessel must be stored for two to four months prior to a lien sale. There is no designated area for storage of "towed" vessels on land or in water. Any storage area must be able to be secured to ensure that towed vessels are not removed from the storage area.

3. **Quicker Disposal Process.** The Codes have been developed to protect the property rights of boatowners. The majority of abandoned vessels in the Delta waterways are "junkers" with no value for resale, little value for salvage, and possible toxic emissions. New State Code language may be needed to address quick disposal of such "junkers", particularly if there is no registration number, no current owner, or concerned party.

4. **Coordinated Removal Program.** Vessels are transported between local jurisdictions easily on the Delta waterways. It seems unfair that the total responsibility and cost of removal of abandoned vessels be left with one local government. Coordinated notification and removal would assist in distributing the responsibility for maintaining the Delta waterways between the several location governments, state and federal agencies. Coordination could be through a memorandum of understanding, a joint powers agency, or through a non-profit organization.

Commissioner Mello asked if there was paid staff and how much of the budget goes to salaries; Mr. Jennings said he and his administrative assistant are paid and the rest are volunteers; he said the budget has not yet been finalized.

Chairman McCarty commented that the Delta Protection Commission has parallel goals and hopes they can work together.

Herbert Hickman, Blackfin Marine Service, said he and other licensed coast guard captains have been looking out for polluters and turning them in. He said they have been doing this work for a long time and will continue.

10. Briefing, Public Hearing, and Discussion of Abandoned Vessels in Delta Waterways.

Margit Aramburu reviewed the staff report and noted the letter from Chris Lauritzen, a comment from Sally Shanks on the need for in-water storage of vessels, and a correction that the registration fee is \$9, not \$15.

Chairman McCarty opened the public hearing.

Seth Cockrell, Marine and Recreation Association and Western Waterway, commended the Commission for reviewing the issue of abandoned vessels. He wanted the Commission to know of another problem, occupied vessels inappropriately moored, releasing sewage, and creating other problems. He said if legislation is considered to create new funds, this problem should also be considered. The legislation may limit length of mooring in certain areas, as the Department of Parks and Recreation limits mooring on its underwater properties.

Herbert Hickman, Blackfin Marine Service, said he is licensed to remove toxic materials. He commented on an associated problem, that insurance companies just pay off the boat owner and do not address the wrecked vessel. He supports efforts to force insurance companies to clean up insured, wrecked vessels. He commented that young people in work programs assisted in a clean-up at New Melones Dam, helping to demolish debris. The costs were lessened by using this labor source.

Steve Bohnak, San Joaquin County Sheriff's Department, noted there is a tremendous problem in San Joaquin County with vessels moored outside of marinas causing pollution; some of the tenants are wanted by the law. Some abandoned vessels are passed from person to person. The County is stuck paying for demolishing a vessel which was floating in the open waterways. He supports the Commission's consideration of this issue.

Bob Calvin, Sacramento County Sheriff's Department, noted the County has their share of abandoned vessels and vessels moored outside of marinas and dumping wastes. There is a lack of funding to do much more than giving the boatowners a ticket a day, until they move. He suggested a restrictions on mooring on levees maintained by Reclamation Districts. He noted if a vessel has valid registration, there is nothing the County sheriff's can do.

Commissioner Mello said he wished Commissioner Curry was here. He said he has had problems before with boaters tying up and telling him they do not have to move for 30 days because its navigable water. He said he wished he had more information about that.

Chairman McCarty asked when law enforcement observes abandoned vessels or boats moored in certain locations for extended periods do they keep a record of these vessels, the number and location. Sergeant Bohnak said law enforcement know where they are; some folks collect these vessels. They have problems with some individuals that know the law, what they can and cannot do. For example, if they are cited for no registration number or sticker, that is addressed within a few days. San Joaquin County does not have the funding to remove abandoned vessels. Some of the individuals move their vessels into another County and there is some coordination. He said San Joaquin County recently cleaned up seven or eight vehicles on Bacon Island Road with the assistance of the District Attorney's Office and Planning Department. He emphasized that the Department does have lists; that lack of funding is the problem.

Commissioner Nottoli commented on the vehicle removal program currently in place and suggested that could be a viable model for a statewide program for vessel removal. He thought legislation to support such a program would be a positive approach.

Chairman McCarty closed the public hearing.

Vice Chair Fargo supported Commissioner Nottoli's comments, that it would be a logical extension to address abandoned vessels. She suggested the Department of Motor Vehicles collect the funds as currently is done for the vehicle program. She commented that the vehicle program is working well addressing a real problem in our cities and counties. She supports the Commission pursuing this approach and suggested having the legislative committee review the matter.

Commissioner Simas suggested an additional briefing on the laws pertaining to these vessels. He suggested developing an idea or program the Commission could promote.

Ms Aramburu added that the vehicle removal program includes formation of a district which is made up of a county and at least half of the cities. The program is a package, the special district sets up rules and areas for parking; this may be a model for a vessel removal program. She suggested getting advice from counsel.

Chairman McCarty said it is an issue of statewide importance, and is happening everywhere. He said it is magnified in the Delta. He noted San Joaquin County is in one of the top five areas for vessel registration in the country. He said the Commission does not have the answer, but the Commission can initiate and take leadership on action which could benefit the entire state and the Delta. He said the Commission needs some additional information to proceed.

Commissioner Broddrick suggested looking into using low-cost labor, such as special youth groups or training programs, to assist in vessel disposal. This could be a regional clean-up program like American River Parkway clean-up. He said vessels cannot be recycled like cars, because many are made of materials such as fiberglass. He said its a great opportunity to get business owners, community leaders, and others to pitch in and do something pro-actively while waiting for a legislative solution. He said the Commission is in a position to help marshall that kind of volunteer effort and offered the limited resources of the Department of Fish and Game and volunteers. He suggested attacking the problem as a community based problem right now, abating some of the biggest problems now.

Chairman McCarty thanked all the participants in the discussion.

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#### 11. Commissioner Comments.

Commissioner Broddrick recognized Department of Fish and Game employees in the audience: Laurie Oldfather and Carl Jochums. He said the Commission may want to invite Mr. Jochums back to brief the Commission on the Oil Spill Clean-Up and Response Program.

Commissioner Mello noted that Tyler Island RD has come to closure on the FEMA payments for the 1986 flood. They received 99.5% of the funds, but said the district had incurred one million dollars in interest in that period.

Commissioner Potter asked if anyone knows the status Deltawide of old OES and FEMA claims. He would appreciate input before a meeting scheduled with OES on January 31, 1996.

**LOCAL, STATE, AND FEDERAL LAW REGARDING VESSELS  
MOORED FOR AN EXTENDED PERIOD OF TIME**

**A. LOCAL ORDINANCES REGARDING MOORING OF VESSELS AND LIVING ON-BOARD:**

According to each of the five Delta county counsel staffs, no Delta county has any ordinance specifically prohibiting the mooring of vessels in waterways for extended periods of time.

Some local governments have adopted ordinances that affect mooring of vessels. For example, **Sacramento County Code** includes an ordinance prohibiting the obstruction of county waterways, levees, or embankments. (See Sacramento County Code section 13.04.020.) The Code also prohibits "(b) placing in ... any public waterway any object in such a way as to interfere with persons using those waters; (c) erecting any barrier or stationary object in any public waters, including, but not limited to, the Sacramento River... without the prior approval of the Sacramento County department of parks and recreation and or other appropriate local, state and federal regulatory agencies." Violation of these provisions is a misdemeanor. (See Sac. Cnty Code section 13.08.300 (b-d).)

**Sacramento City Code** contains a provision specifically prohibiting the mooring of vessels on the Sacramento River in an area comprising 9,000 square feet just north of J Street (Note: This area is not located in the Delta Primary Zone). **City Code** also prohibits **living on board** any vessel in the Sacramento Boat Harbor (area within the boundaries of Miller Park) longer than three days. Violation of this provision is an infraction.

**Enforcement:** The local sheriff and city marine patrol units enforce the local ordinances.

**B. STATE LAWS AFFECTING MOORING OF VESSELS FOR EXTENDED PERIODS OF TIME:**

**1. MOORING PROHIBITED IN DELTA STATE PARKS.**

The Department of Parks and Recreation (DPR) regulations prohibit mooring of vessels in Delta Meadows and Franks Tract for longer than thirty days. (See Title 14 Cal Code Regs §§ 4451 and 4455.)

DPR is also authorized to remove vessels if they are in violation of a DPR regulation or Harbors and Navigation Code provision. (See Title 14 Cal Code Regs § 4356.) Beached or abandoned vessels on DPR property must be removed by the registered owner within 24 hours of notice. The last registered owner is responsible for the costs of removal and any incurred damages.) (See Title 14 Cal Code Regs § 4660.)

## **2. MOORING PROHIBITED WHEN INTERFERING WITH NAVIGATION.**

Harbors and Navigation Code § 523 authorizes any peace officer to remove a moored vessel if it interferes with, or poses an immediate danger, to navigation or the public health, safety or welfare. A violation of this provision is a misdemeanor.

## **3. PUBLIC TRUST DOCTRINE.**

One constraint to living on-board or vessels moored for extended periods of time is the public trust doctrine. The trust is a property interest held by the State government on behalf of all present and future generations. The trust applies to all privately and publicly held unfilled tidelands and submerged lands, and all the beds of navigable rivers, streams, inlets, and etc. (See Public Resources Code § 6301.)

Trustees of the public trust deltawide are the State Lands Commission (SLC), and Department of Fish and Game (DFG). All trustees have a constitutional duty to protect the public interest in tidelands and submerged lands for traditional public trust uses such as fishing, boating, commerce, wildlife, and open space. (See Cal. Const. Art I, § 25; Art. XV, §§ 2 and 3.)

Public Resources Code § 6302 authorizes the SLC to eject from any tide or submerged lands, beds of navigable channels, streams, rivers, and etc., any persons trespassing upon such lands. Public Resources Code § 6302.1(a) authorizes SLC to remove any "vessel...which obstructs the normal movement of traffic or creates a hazard to other vessels..., to public safety, or to the property of another." And, § 6302.1(b) authorizes SLC to remove vessels in tide and submerged lands that "seriously interfere with or pose a critical and immediate danger to navigation or to the public health, safety, or welfare."

Enforcement: SLC has no funding to enforce public trust violations in the Delta. DFG does have more effective enforcement in the Delta but their public trust duties relate to protecting fish and wildlife; thus if moored vessels are not polluting or causing harm to fish or wildlife, then they are not subject to enforcement by DFG.

#### **4. POLLUTION VIOLATIONS.**

Pollution of the waterways is a major concern in the Delta. Typically vessels moored for long periods of time do not have a sewer hook-up, and either store wastes in a holding tank for disposal at a pumpout facility, for example in a marina, or release treated sewage and graywater (shower or sink drainage) into the waterways. See Section 402 of the Clean Water Act and the Porter-Cologne Act.) Federal law requires vessels with toilets to have a sanitation device which treats raw sewage. The Central Valley Regional Water Quality Control Plan's 1994 Basin Plan prohibits "the discharge of toilet wastes from the vessels of all houseboat rental businesses on...the Delta" (page IV-25.00).

DFG is authorized to cite vessels owners for dumping sewage in waters pursuant to Fish and Game Code § 5650.

[See also Section C pertaining to the Coast Guards enforcement of marine sanitation devices.]

#### **C. FEDERAL LAWS AFFECTING MOORING OF VESSELS FOR EXTENDED PERIODS OF TIME.**

##### **1. OBSTRUCTION OF NAVIGABLE WATERWAYS.**

Title 33 USC § 409 makes it unlawful to "tie up or anchor vessels in navigable channels in such a manner as to obstruct the passage of other vessels; or to voluntarily or carelessly sink vessels in navigable channels." The Army Corps of Engineers and the Coast Guard are responsible for enforcing this law. The vessel owner has the duty to remove such vessels or pay for the removal of such vessels.

Section 409 is not an absolute prohibition of the anchorage of vessels in navigable channels, but is intended to prevent their anchorage when it monopolizes a channel, and is not violated leaving insufficient passageway for other vessels. (See *The Grand Manan*, (1913) 208 F. 583.) Whether anchorage or mooring constitutes an obstruction to navigation is to be determined by reference to all relevant facts and circumstances. (See *Orange Beach Water, Sewer, and Fire Protection Authority v. M/V Alva*, (1982) 680 F.2d 1374.)

##### **2. RULES FOR ANCHORED VESSELS.**

Title 33 USC 471 authorizes the Coast Guard under the authority of the Secretary of Transportation to establish anchorage areas where boats may be safely moored. The purpose of the anchorage is to protect navigation.

Title 33 USC § 2030 sets forth the rules for anchored vessels of all sizes. Basically the rules require that an anchored vessel exhibit a white or red light depending on the size of the vessel.

### **3. MARINE SANITATION DEVICES.**

The Coast Guard is solely responsible for certifying marine sanitation devices and assuring that vessels with toilets have approved devices. Coast Guard officials may board a vessel at any time to inspect marine sanitation devices to ensure compliance with federal law. Federal law in this area preempts local or state law. Operating a boat not properly equipped can result in a civil penalty of up to \$2,000. However, because the federal law only applies to sewage, not graywater, local or state government may adopt regulations pertaining to graywater or other wastes.

[CM, 5/24/96]

1/12/96

## IP's for Abandoned Vessels:

- ✓ Deeltakeper
- ✓ DBAW, Dave Johnson
- ✓ Chris Samitzen
- ✓ Wes Dodd, Colo Shuff
- ✓ Seth Cockrell
- ✓ Sally Shmuck
- ✓ Sauto Shuff
- ✓ S.J. Shuff
- ✓ Salmo Shuff
- ✓ Yolo Shuff
- ✓ Coast Guard / Rio Vista
- ✓ DFG - Merrin Hee
- ✓ STARS

Add:

Diane Shipway